

used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

The proposed rule required that an originator's bank verify the name and address of originators and beneficiaries that are not account holders by examination of a document that contained such information. A few commenters questioned whether they had a duty to determine the authenticity of the identification document provided by the person and used for verification. One commenter questioned what constituted adequate verification. Another commenter questioned what it should do if a non-account holder provides identification that appears to be falsified. Several commenters recommended that passports be allowed as acceptable identification, even though they do not include addresses.

The final rule has been clarified to require that the identity of an originator or beneficiary that is not an established customer be verified by examination of a document, preferably one that contains the person's name, address, and photograph. For aliens and nonresidents, the final rule has been amended to allow banks to rely on a passport or other official document evidencing nationality or residence. Banks should exercise care in accordance with applicable law and regulations to ensure that the identification presented is not falsified.

*Section 103.33(e)(4) and Section 103.33(f)(4)*

**Retrievability Requirements**—The proposal stated that banks must be able to access funds transfer records readily by name or account number of the originator or beneficiary, as the case may be, and may do so through reference to some other record maintained by the bank. Many commenters requested clarification of the term "readily retrievable" and asked how much time would be allowed to provide funds transfer records.

The Treasury and the Board acknowledge that the term "readily" is ambiguous and have eliminated it from the regulation. The existing standards set forth in 31 CFR 103.38(d) will be used to assess whether a bank has complied with the rule with respect to reporting records of funds transfers in response to a request by a law enforcement agency. Under this standard, the expected timeliness of retrievability will vary by request. Generally, records should be accessible within a reasonable period of time, considering the quantity of records requested, the nature and age of the

record, the amount and type of information provided by the law enforcement agency making the request, as well as the particular bank's volume and capacity to retrieve the records. Usually, law enforcement agents will provide the approximate transaction dates of the funds transfer records requested. In some situations, law enforcement agencies may prefer to receive the requested information as it becomes available, rather than wait until the entire search is completed. Law enforcement agencies should provide banks with the agencies' desired method of providing the information.

The final rule does not require that funds transfer records be retained at the location where the payment order is accepted or at another particular location of the bank subject to the recordkeeping requirements. Funds transfer records may be retained, for example, at the bank's processing location for funds transfers. A bank should ensure that its funds transfer records are retained at a location that enables them to be accessible within a reasonable period of time.

Several commenters questioned whether the retrievability standard would apply to funds transfers executed prior to the rule's effective date. The retrievability standard would apply only to funds transfers made on or after the effective date. The Treasury and the Board note, however, that establishing a specific retrievability standard under this rule does not preclude banks' responsibilities to comply with a properly executed subpoena or search warrant, regardless of whether the transfer was executed before or after the effective date of the rule. Banks must provide information with respect to funds transfers made before the final rule's effective date in accordance with the Right to Financial Privacy Act (12 USC 3401, et seq.) and the Electronic Communications Privacy Act (18 USC 2701, et seq.).

Many commenters believed that the proposed rule would require an automated retrieval system to comply with the retrievability requirement. Although an automated retrieval system is not required by the rule, a bank may wish to consider implementing an automated system, depending on the demand for funds transfer records and its current means of keeping the records (several commenters indicated that funds transfer records are sorted by date and, in some cases, by bank branch). Based on the volume of law enforcement requests, a bank should weigh the costs of implementing an

automated system versus the costs of searching manual records.

A bank may access funds transfer records through reference to some other existing record. If a law enforcement agency provides an account number, the bank could reference its statement file for that account number to determine funds transfer transaction reference numbers and dates. Using this information, the bank could then retrieve the funds transfer records by either manual or automated retrieval. If a law enforcement agency provided a bank with a customer name, the bank could reference its customer information file to determine the customer's account number prior to accessing its statement file.

Some commenters indicated that they should be allowed to choose whether their records would be retrievable by name, account number, or both. These commenters requested that the regulation be clarified to state that the bank has the flexibility to establish the specific retrievability method. As noted, banks have the flexibility to maintain their funds transfer records to be retrievable by name, account number, reference number, or other data element, so long as they have the capability to retrieve the transfer records if the law enforcement agency does not provide that particular data element in its request. Despite the establishment of a retrievability standard under the rule, banks still would be obligated to comply with any properly executed subpoena or search warrant. Because law enforcement agencies may have access to only one identifier (e.g., name or account number) during the course of an investigation, banks are likely to receive requests containing either piece of information, regardless of how the bank has chosen to maintain its records. Thus, no changes have been made to the final rule to allow banks to specify the method of retrievability.

A few commenters noted that account numbers tend to change due to mergers and questioned whether they would be required to retrieve information based on the old or new account number. Commenters also said that they retain, as part of their funds transfer records, the account number at the time of the transaction, which may not be the current account number. The funds transfer records should be retrievable using the account number at the time of the transaction, as it is likely that law enforcement agency requests may come from tracing a transfer containing that account number. In situations where an established customer's address has changed, the institution may provide either the customer's current address or